

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005**

NOTICE OF PROPOSED RULEMAKING

**FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY
PRACTICES**

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to its authority under D.C. Official Code § 34-1439(c) (2006 Supp.), hereby gives notices of its intent to adopt Chapter 29 of Title 15 DCMR in not less than thirty (30) days after publication of this Notice of Proposed Rulemaking ("Notice" or "NOPR") in the *D.C. Register*.¹

2. The proposed regulations establish the Commission's rules governing the implementation of and compliance with the "Renewable Energy Portfolio Act of 2004" ("RPS Act").² These proposed rules contain revisions to the Interim Rules suggested by the RPS Working Group and later adopted by the Commission in Order Nos. 13840, 13899 and 14225.³

CHAPTER 29 RENEWABLE ENERGY PORTFOLIO STANDARD

Section	
2900	APPLICABILITY
2901	RPS COMPLIANCE REQUIREMENTS
2902	GENERATOR CERTIFICATION
2903	CREATION AND TRACKING OF RENEWABLE ENERGY CREDITS
2904	RECOVERY OF FEES AND COSTS
2905	WAIVER
2906-2998	[RESERVED]
2999	DEFINITIONS

2900 APPLICABILITY

2900.1 This Chapter establishes the Public Service Commission's ("Commission") Rules and Regulations governing the Renewable Energy

¹ D.C. Official Code § 34-1439 (c) (2006 Supp.).

² The Renewable Energy Portfolio Act of 2004 is codified at D.C. Official Code § 34-1429 *et. seq.*

³ *Formal Case No. 945, In the Matter of the Investigation Into Electric Services Market Competition and Regulatory Practices* ("F.C. 945"), Order No 13840, rel. December 28, 2005, Order No. 13899, rel. March 27, 2006 and Order No. 14225, rel. March 2, 2007.

Portfolio Standard ("RPS") applicable to an Electricity Supplier as provided in D.C. Official Code §§ 34-1431 - 34-1439.

2901 RPS COMPLIANCE REQUIREMENTS

- 2901.1 An Electricity Supplier shall meet the Renewable Energy Portfolio Standard requirement by obtaining Renewable Energy Credits ("REC") that equal the annual percentage requirement for electricity sold at retail or by paying the specified compliance fee. An Electricity Supplier shall not apply any surplus Renewable Energy Credits derived from voluntary purchases of energy from qualified renewable sources toward its mandatory compliance requirements.
- 2901.2 Each District of Columbia Electricity Supplier must establish a Generation Attribute Tracking System ("GATS") to account for the load it serves within the District of Columbia. Suppliers shall maintain that account in good standing.
- 2901.3 Electricity Suppliers may acquire and accumulate Renewable Energy Credits as of January 1, 2006, in accordance with D.C. Official Code § 34-1433(c).
- 2901.4 Compliance with the Renewable Energy Portfolio Standard is on a calendar year basis beginning with calendar year 2007. Pursuant to D.C. Official Code § 34-1432(b), if the standard becomes applicable to electricity sold to a customer after the start of a calendar year, the standard shall not apply to electricity sold to the customer during that portion of the year before the standard became applicable.
- 2901.5 Each Electricity Supplier must prepare and submit an annual Compliance Report to the Commission containing the following information:
- (a) The quantity of its annual District of Columbia retail electricity sales;
 - (b) The quantity of any exempt retail electricity sales to a customer with a Renewable On-Site Generator;
 - (c) A calculation of the annual quantity of required Tier One, Tier Two, and Solar Energy Renewable Energy Credits;
 - (d) The quantity of Tier One, Tier Two, and Solar Energy Renewable Energy Credits purchased and evidence of those purchases;

- (e) The quantity of Tier One, Tier Two, and Solar Energy Credits transferred to the Electricity Supplier by a Renewable On-Site Generator;
- (f) A calculation of any compliance fees owed due to the inability of the Energy Supplier to procure the required quantity of Tier One, Tier Two, or Solar Energy Renewable Energy Credits;
- (g) Certification of the accuracy and veracity of the report;
- (h) All documentation supporting the data appearing in the annual compliance report;
- (i) A list of all Renewable Energy Credits used to comply with the Renewable Energy Portfolio Standard;
- (j) A summary report of Renewable Energy Credits retired during the reporting period; and
- (k) The total price paid for Tier One, Tier Two, and Solar Energy Renewable Energy Credits. The total price paid may be submitted confidentially so long as the words "Protected-Materials – Contains Competitive Business Information" or words of similar import are clearly printed on the top of each page. Suppliers that purchase RECs solely via bundled products are exempt from including the total price paid for Tier One, Tier Two and Solar Energy Renewable Energy Credits in their annual compliance reports.

2901.6 Each Electricity Supplier's annual compliance report shall be submitted to the Commission by May 1 of the calendar year following the year of compliance. The Commission shall complete its review of each Electricity Supplier's Compliance Report within 75 business days after submission. After notification of a decision of non-compliance by the Commission, a supplier shall submit the appropriate payment (or its response contesting the notification) within thirty (30) days.

2901.7 Any Electricity Supplier that fails to file the annual compliance report as required by this Chapter and D.C. Official Code § 34-1434(a) may be subject to Commission action to compel submission of the required report. Such action may include the issuance of an Order to Show Cause by the Commission.

2901.8 Any Electricity Supplier that fails to meet its Renewable Energy Portfolio Standard requirements must submit the required annual Compliance Fee to the District of Columbia Renewable Energy Development Fund

administered by the District of Columbia Department of the Environment's Energy Office ("DDOE" or "Energy Office") by May 1 of the calendar year following the year of compliance.

2901.9 The Compliance Fee shall be:

- (a) \$25 for each Renewable Energy Credit shortfall for Tier One resources;
- (b) \$10 for each Renewable Energy Credit shortfall for Tier Two resources; and
- (c) \$300 for each Renewable Energy Credit shortfall for Solar Energy resources.

2902 GENERATOR CERTIFICATION

2902.1 Renewable electricity generators, including behind-the-meter ("BTM") generators, must be certified as a qualified resource by the Commission.

2902.2 Renewable electricity generators, including BTM generators, may be certified as a Tier One or Tier Two resource. In order to be certified, applicants must:

- (a) Complete the Commission's "Application for Certification as an Eligible District of Columbia Renewable Energy Standards Generating Facility" ("Regular Application") or
- (b) Complete the Commission's "Streamlined Application for Certification as an Eligible District of Columbia Renewable Energy Standards Generating Facility" ("Streamlined Application") in cases where the applicant has already been certified as a renewable energy resource by another PJM state and the Commission determines certification to be comparable to the Renewable Energy Portfolio Standards requirements in the District of Columbia. The applicant should refer to the Tier I and Tier II eligibility matrices available on the Commission's website to determine if the Streamlined Application can be submitted.

2902.3 The following states are deemed to be within the PJM Interconnection Region as of October 2007: Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

2902.4 The Renewable Energy Portfolio Standard ("RPS") Working Group shall identify any new renewable energy resource that has been certified by

another PJM state that is eligible for participation in the District of Columbia's RPS. This information shall be included in the filing of the annual update to the Tier I and Tier II eligibility matrices to be submitted by February 1 of each calendar year.

2902.5 An applicant submitting a Regular Application or a Streamlined Application for certification as a renewable resource shall state, at a minimum:

- (a) The name of the Renewable Energy Facility for which the application is made and its address;
- (b) The name of the owner of the facility and the owner's contact information;
- (c) The name of the operator of the facility and the operator's contact information;
- (d) The name of a contact person and the person's contact information;
- (e) The location of the resource;
- (f) The renewable fuel type(s) and capacity information;
- (g) The commercial operation start date;
- (h) Whether the facility is a "behind-the-meter" generator;
- (i) Whether the power from the generation unit(s) has the potential to be delivered and consumed in the PJM Interconnection Region;
- (j) Whether the facility is certified by another state as an eligible generation resource to the meet the portfolio standards of that state; and
- (k) The Office of Regulatory Information Systems Plant Location ("ORISPL") Code for the facility.

2902.6 In addition to the information required in § 2902.5, an applicant submitting a Regular Application must also attach:

- (a) A current Certificate of Good Standing for the applicant issued by the state in which the business was formed;

- (b) A copy of the U.S. Department of Energy, Energy Information Administration Form EIA 860, if the rated capacity is greater than 1.0 MW;
- (c) A Certificate of Authorization to Conduct Business in the District of Columbia, if applicable;
- (d) An Affidavit of General Compliance;
- (e) Documentation of authority to sign on behalf of the Applicant; and
- (f) An Affidavit of Environmental Compliance from the state where the facility is located.

2902.7 In addition to the information required in § 2902.5, an applicant submitting a Streamlined Application must also attach an Affidavit of General Compliance and an Affidavit of Environmental Compliance.

2902.8 A Regular or Streamlined Application may be submitted at any time on the Commission-approved application forms. All application forms are available from the Office of the Commission Secretary or the Commission's website at www.dcpssc.org/applications/applications.asp.

2902.9 The Commission shall issue a decision on the Regular Application forms within thirty (30) business days of filing. The generation resource shall be considered certified if the Commission has not acted within the thirty (30) business-day period except where the Commission or its staff has issued a request for further information that is still outstanding.

2902.10 The Commission shall issue a decision on the Streamlined Application forms within fifteen (15) business days of filing. The generation resource shall be considered certified if the Commission has not acted within the fifteen (15) business-day period, except where the Commission or its staff has issued a request for further information that is still outstanding.

2902.11 In cases where the Commission or its staff determines that a Regular Application is insufficient or incomplete, the Commission or its staff will send a written request for additional information within fifteen (15) business days of the date of the filing of the application. In such cases, the applicant shall have fifteen (15) days to submit the additional information.

2902.12 In cases where the Commission or its staff determines that a Streamlined Application is insufficient or incomplete, the Commission or its staff will send a written request for additional information within ten business (10) days of the date of the filing of the application. In such cases, the applicant shall have fifteen (15) days to submit the additional information.

- 2902.13 A request for additional information from the Commission or its staff shall toll the deadline in these rules for issuing a decision on the applicant's Regular or Streamlined Application.
- 2902.14 Upon receipt of the additional information from the applicant or its authorized representative, the Commission shall issue a decision on the application in accordance with the time periods prescribed in § 2902.9 for Regular Applications and § 2902.10 for Streamlined Applications.
- 2902.15 Upon approval of an application, the Commission shall assign a unique GATS certificate number to the eligible renewable energy generating resource. The Commission should be notified of any planned substantive changes in the operating characteristics of a certified generating facility at least thirty (30) days prior to the effective date of such changes. Substantive changes include, but are not limited to changes in fuel type, fuel mix, and generator type. A revised application should be submitted for Commission review, subject to the time periods prescribed in § 2902.9 for Regular Applications and § 2902.10 for Streamlined Applications. In addition, applicants and District-certified generating facilities should notify the Commission of any substantive changes in information provided in an original or amended application within thirty (30) days.
- 2902.16 A Renewable electricity generator may be decertified by the Commission if it is determined to no longer be an eligible renewable resource due to fraud or a material change in the nature of the resource. Before being decertified, a renewable electricity generator will be given thirty (30) days' written notice and an opportunity to show cause why it should not be decertified.
- 2902.17 Any generating facility that is decertified due to fraud may not create any District of Columbia Renewable Energy Credits for a three-year period and may not retroactively create Renewable Energy Credits for that same three-year period.
- 2902.18 Any subsequent unrelated owner of the decertified renewable electricity generator is not subject to the three-year exclusion beginning with its effective date of ownership.
- 2902.19 Electricity Supplier(s) with Renewable Energy Credits created prior to decertification of the generating facility by the Commission shall be eligible to be used for Renewable Energy Portfolio Standard compliance purposes, subject to the restrictions identified in § 2903.2.

2903 CREATION AND TRACKING OF RENEWABLE ENERGY CREDITS

2903.1 RECs shall be created and tracked through the PJM Environmental Information Service GATS ("PJM-EIS GATS") beginning January 1, 2006. The accumulation of Renewable Energy Credits derived from generation occurring prior to the date of January 1, 2006 is not permissible.

- (a) Behind-the-meter generators must file a Renewable Behind-the-Meter Generation Report with the Commission that corresponds with the recordation of any energy production through GATS. Behind-the-Meter generators with a capacity of less than 10 kW may submit engineering based estimates of their output if the generator is not directly metered by a revenue grade utility meter.
- (b) Renewable Energy Credits created by behind-the-meter generators must be recorded in GATS at least once each calendar year in order to be eligible for compliance.

2903.2 RECs shall be valid for a three-year period from the date of generation beginning January 1, 2006, except where precluded by statute. The last business day of January of each year shall be the deadline for the creation of RECs for the previous year, subject to further changes in GATS provisions.

2903.3 A REC shall be retired after it is used to comply with any state's Renewable Energy Portfolio requirement.

2903.4 Retroactively created RECs must be created and tracked through PJM-EIS GATS.

2903.5 An authorized representative of the renewable on-site generator shall file a renewable on-site generator (or BTM generator) report with the Commission under § 2903.1(a) of this regulation within 1 week of each recording with GATS.

2903.6 The renewable on-site generator (or BTM generator) report required under § 2903.1(a) of this regulation shall be on a form provided by the Commission and contain, at a minimum, the following information:

- (a) A certification that the RECs attributable to the on-site generation have not expired, retired, been transferred, or redeemed; and

- (b) A report a statement on the quantity of electricity generated as determined by an engineering estimate (if appropriate) or revenue-quality meter.

2904 RECOVERY OF FEES AND COSTS

- 2904.1 Recovery of any fees and costs by the local electric distribution company and electric suppliers shall be in accordance with D.C. Official Code § 34-1435.
- 2904.2 In the case of an electric supplier, no electric supplier shall attempt to recover any compliance fee levied pursuant to D.C. Official Code § 34-1434 from its customers without receiving prior approval from the Commission.
- 2904.3 Pursuant to D.C. Official Code § 34-1435(a), the local electric distribution company may recover prudently incurred Renewable Energy Portfolio Standard compliance costs, including REC purchases and any compliance fees.
- 2904.4 Electric distribution company compliance costs for Standard Offer Service ("SOS") shall be considered prudent if SOS energy suppliers are elected through a competitive bid process when the cost of complying with the Renewable Energy Portfolio Standard is included in the supplier's bid prices.
- 2904.5 Electric distribution company compliance costs for Market Price Service shall be recovered through the Market Price Service Procurement Rate Schedule.
- 2904.6 Any cost recovery for the local distribution company or other electric suppliers shall be in the form of a non-bypassable surcharge to current applicable customers and shall be disclosed on their bills.

2905 WAIVER

The Commission reserves the right to waive any provision of these rules for good cause shown.

2906-2998 (Reserved)

2999 DEFINITIONS

- 2999.1 For the purposes of this chapter:

“Adjacent PJM State” means a state that is adjacent to the PJM Interconnection Region. The following states are deemed adjacent to the PJM Interconnection Region as of October 2007: Alabama, Arkansas, Georgia, Iowa, Mississippi, Missouri, New York, South Carolina, and Wisconsin. The adjacent states will vary as the boundary of the PJM Interconnection Region changes over time.

“Adjacent Control Area” means an electric control area that is adjacent to the PJM Interconnection Region. The following control areas are deemed adjacent to PJM as of November 2005: Alliant Energy – CA – ALTE; Alliant Energy – CA – ALTW; Ameren Transmission; Central Illinois Light Co.; Cinergy Corporation; City Water Light & Power; Duke Power Company; East Kentucky Power Cooperative, Inc.; First Energy Corporation; Illinois Power Company; Indianapolis Power & Light Company; LG&E Energy Transmission Services; Michigan Electric Coordinated Systems; MidAmerican Energy Company; New York Independent System Operator; Northern Indiana Public Service Company; Ohio Valley Electric Corporation; Progress Energy Carolinas – EAST; Progress Energy Carolinas – WEST; Tennessee Valley Authority; and Wisconsin Energy Corporation. The adjacent control areas will vary as the boundary of the PJM Interconnection Region changes over time.

“Behind-the-Meter Generator” means a renewable on-site generator that is located behind a retail customer meter such that no utility-owned transmission or distribution facilities are used to deliver the energy from the generating unit to the on-site generator’s load.

“Brush” means shrubs and stands of short, scrubby trees that do not reach merchantable size.

“Commission” means the Public Service Commission of the District of Columbia.

“Customer generation” means generation that is not principally dedicated for sale into the wholesale electricity market.

“Dunnage” means loose materials or padding used to support or protect cargo within shipping containers.

“Energy Office” means the District of Columbia Department of the Environment’s Energy Office.

“Electricity supplier” means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

- (a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;

- (b) Any person who purchase electricity for its own use or for the use of its subsidiaries or affiliates; or
- (c) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:
 - (1) Take title to the electricity;
 - (2) Market electric services to the individually-metered tenants of the building; or
 - (3) Engage in the resale of electric services to others;
- (d) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and
- (e) A consolidator.

“Fund” means the District of Columbia Renewable Energy Development Fund.

“PJM Interconnection” means the regional transmission organization that is regulated by the Federal Energy Regulatory Commission and functionally controls the transmission system for the region that includes the District of Columbia.

“PJM Interconnection Region” means the area within which the movement of wholesale electricity is coordinated by the PJM Interconnection, L.L.C. With respect to qualifying Renewable Energy Credits, the following states are deemed within the PJM Interconnection Region as of October 2007: Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

“Qualifying biomass” means a solid, non-hazardous, cellulosic waste material that is segregated from other waste materials, and is derived from any of the following forest-related resources, with the exception of old growth timber, unsegregated solid waste, or post-consumer wastepaper:

- (a) Mill residue;
- (b) Precommercial soft wood thinning;
- (c) Slash;
- (d) Brush;
- (e) Yard waste;

- (f) A waste pallet, crate, or dunnage;
- (g) Agricultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by products or residues; or
- (h) Cofired biomass, subject to the condition under § 34-1433(f).

“Renewable energy credit” or “REC” means a credit representing one megawatt-hour of electricity consumed within the PJM Interconnection region that is derived from a tier one renewable source or a tier two renewable source that is located:

- (a) In the PJM Interconnection region or in a state that is adjacent to the PJM Interconnection region; or
- (b) Outside the area described in subparagraph (a) of this section but in a control area that is adjacent to the PJM Interconnection region, if the electricity is delivered into the PJM Interconnection region.

“Renewable energy portfolio standard” or “standard” means the percentage of electricity sales at retail in the District of Columbia that is to be derived from tier one renewable sources and tier two renewable sources in accordance with § 34-1432(c).

“Renewable on-site generator” means a person that generates electricity on site from a tier one renewable source or tier two renewable source for the person’s own use.

“Slash” means:

- (a) Tree tops, branches, bark, or other residue left on the ground after logging or other forestry operations; or
- (b) Tree debris left after a natural catastrophe.

“Solar energy” means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy.

“Tier one renewable source” means one or more of the following types of energy sources:

- (a) Solar energy;
- (b) Wind;
- (c) Qualifying biomass;
- (d) Methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

- (e) Geothermal;
- (f) Ocean, including energy from waves, tides, currents, and thermal differences; and
- (g) Fuel cells producing electricity from a tier one renewable source under subparagraph (c) or (d) of this paragraph.

“Tier two renewable source” means one or more of the following types of energy sources:

- (a) Hydroelectric power other than pumped storage generation; or
- (b) Waste-to-energy.

“Waste-to-energy” means waste treatment, including the use of a licensed facility that burns waste resources in high-efficiency furnaces/boilers, to produce electricity. Such resources include municipal solid waste but exclude waste coal.

3. All persons interested in commenting on this proposed rulemaking may submit comments, in writing, no later than thirty (30) days after the date of publication of this NOPR in the *D.C. Register*. Persons interested in submitting reply comments may do so no later than forty-five (45) days after the date of publication of this NOPR in the *D.C. Register*. All comments and replies must be sent to Dorothy M. Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., Second Floor, West Tower, Washington, DC 20005. Copies of these proposed rules may be obtained, at cost, by writing to the Commission Secretary at the above address. Once the comment and reply comment periods have expired, the Commission will take final rulemaking action.